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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/541,680	03/10/2006	Jean-Yves Lazennec	0617-1003	8389

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EXAMINER

SCHILLINGER, ANN M

ART UNIT PAPER NUMBER

3738

DATE MAILED: 12/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/541,680

Applicant(s)

LAZENNEC ET AL.

Examiner

Ann Schillinger

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 July 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 9/28/05.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3, 6, 7 are rejected under 35 U.S.C. 102(e) as being anticipated by Serbousek et al. (U.S. Pat. No. 6,610,097). Serbousek et al. discloses claim 1 as follows: acetabular implant for hip prosthesis comprising: a first type of insert (14) having a spherical internal cavity (Figure 3) for the assembly of a hemispherical kernel (16) with an internal cavity (55) capable of cooperating with a femoral head with an articulation capability (col. 4, lines 12-15); a second type of insert (214) having an internal cavity (shown in Figure 6) capable of cooperating with the femoral head with an articulation capability (Figure 6 shows that the invention would be capable of articulating with a femoral head); characterised in that the centre of rotation of the femoral head is different from the axis of rotation of the above mentioned first type of insert and/or the above mentioned second type of insert (col. 4, lines 5-10 discloses that element 14 has anti-rotation projections, and since the embodiment shown in Figure 6 lacks element 14, its rotational characteristics will be different).

Serbousek et al. discloses claim 2 as follows: implant according to claim 1, characterised in that it includes a metallic hemispherical shaped cup (12) that can be fixed in the bottom of the acetabular cavity of the iliac bone (col. 4, lines 31-33).

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Serbousek et al. discloses claim 3 as follows: implant according to claim 2, characterised in that the cup delimits an internal cavity with arrangements for assembly at will, in a fixed manner, of the two above mentioned first (Figure 3) and second (Figure 6) insert types (col. 4, lines 27-33).

Serbousek et al. discloses claim 6 as follows: implant according to claim 1, characterised in that the arrangements of the internal cavity (1a) of the cup (1) cooperate with complementary arrangements on the outside surface of the two types of inserts (2) and (3) to make a fixation by a clipping effect (col. 2, lines 23-28; col. 3, lines 54-59).

Serbousek et al. discloses claim 7 as follows: implant according to claim 6, characterised in that the arrangements are composed of a series of truncated circular contact surfaces (28, 30 in Figure 1).

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Serbousek et al. in view of Oh (U.S. Pat. No. 5,314,494). Serbousek et al. does not disclose a ring that can be split so that it can be positioned to retain the femoral head. Oh teaches such a ring in elements 78 and 81 of Figure 3, and in col. 5, line 64 through col. 6, line 6. Therefore, it would

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have been obvious to one of ordinary skill in the art at the time the invention was made to use a retaining ring if necessary to help properly secure the femoral head in position.

Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Serbousek et al. in view of Bekki et al. (U.S. Pat. No. 5,092,898). Serbousek et al. discloses that the major parts of the implant are made either of metal, or polyethylene or ceramic in col. 3, lines 64-65, col. 4, lines 20-24, and col. 6, lines 5-8. While, Serbousek et al. describes the use of a prosthetic femoral head in col. 4, lines 12-15, the reference does not disclose what type of materials the femoral head is made of. Bekki et al. teaches that it is well known in the art to make such femoral heads out of metal or plastic in col. 1, lines 58-62. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use metals or ceramics when making the femoral head for Serbousek et al.'s invention.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ann Schillinger whose telephone number is (571) 272-6652. The examiner can normally be reached on Mon. thru Fri. 9 a.m. to 4 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ann Schillinger  
November 21, 2006

*A. Stewart*  
**ALVIN J. STEWART**  
**PRIMARY EXAMINER**